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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,983	07/21/2004	Masatoshi Tanaka	740819-1077	2000
7590	12/01/2005		EXAMINER	
Nixon Peabody 401 9th Street N W Suite 900 Washington, DC 20004-2128				DOAN, JENNIFER
			ART UNIT	PAPER NUMBER
			2874	

DATE MAILED: 12/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/501,983	TANAKA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jennifer Doan	2874	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 13 September 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 21 July 2004 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 071905.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

The amendment, filed on September 13, 2005, has been considered and entered.

Claims 1-8 are now pending.

Claim 1 is amended. Claims 4-8 are newly added. The previous ground of rejection is now changed in this Office Action in response to the amendment of claim 1 and newly added claims 4-8. Since the new ground of rejection is necessitated by the amendment, this office action is made final.

### ***Specification***

1. Claims 7 and 8 are objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

Line 2 of claims 7 and 8 recites "said working portion". It should be changed to "said marking portion".

Appropriate correction is required.

Applicants' cooperation is requested in correcting any other errors of which applicants may become aware in the specification.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being obvious over Kawanishi et al. (U.S. Patent 6,788,865) in view of Kawanishi et al. (U.S. Patent 6,404,966).

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing

that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

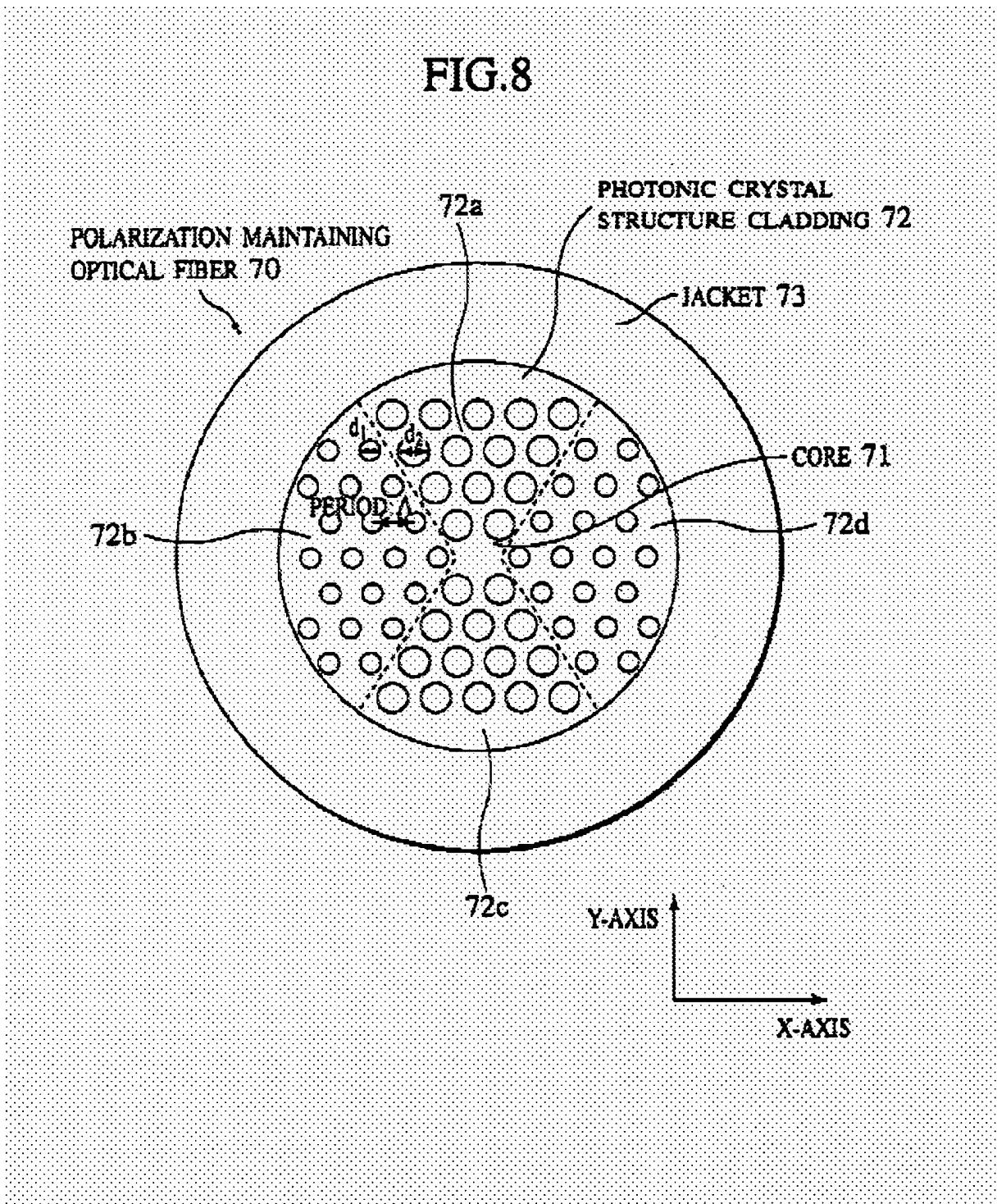
With respect to claims 1-8, Kawanishi et al. (U.S. Patent 6,788,865) (figure 8) disclose a polarization-maintaining photonic crystal fiber comprising a core (71); a clad layer (72) surrounding the core (71), the clad layer (72) including a large number of thin holes extending along the axis of the fiber (70), the thin holes being arranged in a crystalline formation; and an over clad layer (73) surrounding the clad layer (72), wherein polarization of light propagating through the core (71) is maintained exclusively by the thin holes in the clad layer (see figure 8).

Kawanishi et al. (U.S. Patent 6,788,865) do not explicitly disclose the over clad layer further comprising a marking portion is a pair of opposing holes in the over clad layer extending along the axis of the fiber and spaced apart from the thin holes in the clad layer for indicating a polarization plane to be maintained and the marking portion has circular cross section and is made of a material having a refractive index different from that of the material of the over clad layer.

However, Kawanishi et al. (U.S. Patent 6,404,966) disclose the over clad layer further comprising a marking portion (A2, figure 14) is a pair of opposing holes in the over clad layer extending along the axis of the fiber and spaced apart from the thin holes in the clad layer for indicating a polarization plane to be maintained and the marking portion has circular cross section and is made of a material having a refractive index different from that of the material of the over clad layer (column 6, lines 20-26). Therefore, it would have been obvious to one having ordinary skill in the art at the time

the invention was made to modify the device of Kawanishi (6,788,865) with a marking portion having all the features described (accordance with the teaching of Kawanishi (6,404,966)) for the purpose of applying stress to facilitate the manufacture of a polarization maintaining fiber.

FIG.8



***Response to Arguments***

5. Applicants' argument filed on September 13, 2005 has been fully considered.

6. With respect to claims 1-8:

On page 4 of the remarks, it is argued that the Kawanishi (6,404,966) reference does not disclose the polarization of light propagating through the core is maintained exclusively by the thin holes in the clad layer as recited in claim 1.

The examiner fully agrees with the applicants' arguments. However, the examiner respectfully submits that a new ground of rejection based on the newly cited reference has been applied to claims 1-8 in response to the amendment of the claims.

Please refer to claim rejections 35 U.S.C. 103 above.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Doan whose telephone number is (571) 272-2346. The examiner can normally be reached on Monday to Thursday from 6:00 am to 3:30 pm, second Friday off.

9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rodney Bovernick can be reached on (571) 272-2344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer Doan

Patent Examiner

November 23, 2005